

# Small Business Compliance Policy

## SMALL BUSINESS COMPLIANCE POLICY

### A. INTRODUCTION AND PURPOSE

The Small Business Compliance Policy is intended to promote environmental compliance among small businesses by providing incentives for them to make use of compliance assistance programs, environmental audits, or compliance management systems (CMS), or to participate in any activities that may increase small businesses' understanding of the environmental requirements with which they must comply. The Policy accomplishes this in two ways: by waiving or reducing civil penalties to which a small business might otherwise be subject, and by deferring to States and local governments or tribal authorities that offer these incentives consistent with the criteria established in this Policy.

EPA will waive or reduce the gravity component of civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by:

- 1) voluntarily discovering a violation,
- 2) promptly disclosing the violation within the required time period, and
- 3) expeditiously correcting the violation within the proper timeframe.

To obtain the benefits of the Policy, the facility must also meet criteria on violation history, lack of harm, and criminal conduct.

### B. BACKGROUND

This Policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

### C. APPLICABILITY

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business).<sup>1</sup> Entities, as defined under SBREFA, also include small governments and small organizations. Facilities that are operated by municipalities or other local governments may be covered under the Small Communities Policy (see <http://www.epa.gov/oeca/scpolicy.html>). Facilities that are disclosing violations involving multiple facilities should refer to

the sections on multiple facilities in the Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy) of April 11, 2000.

This Policy supersedes the previous version of the policy which was called the Policy on Compliance Incentives for Small Businesses and became effective on June 10, 1996. To the extent that this Policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

### D. HOW SMALL BUSINESSES CAN QUALIFY FOR PENALTY REDUCTION

EPA will eliminate or reduce the gravity component of civil penalties against small businesses based on the following criteria:

1. **Discovery is Voluntary.** The small business discovers a violation on its own before an EPA or State inspection. For example, a small business may discover violations after receiving compliance assistance, conducting an environmental audit or participating in mentoring programs. Other activities that may be useful in discovering violations include establishing CMS, using compliance checklists, reading materials on complying with environmental requirements, using compliance assistance center web sites, and attending training classes.

The violation must be identified voluntarily, and not through a monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, emissions violations discovered through a continuous emissions monitor (or alternative monitor established in a permit), violations of National Pollutant Discharge Elimination System (NPDES) discharge limits discovered through required sampling or monitoring, and violations discovered through a compliance audit required to be performed by terms of a consent order or settlement order are not eligible for penalty reduction under the policy.

2. **Disclosure Period is Met.**

- i. The small business must voluntarily disclose a specific violation fully and in writing to EPA or the State within 21 calendar days after the small business has discovered that the violation has occurred, or may have occurred. Prompt disclosure is evidence of the small business's good faith in wanting to achieve or return to compliance as soon as possible. For purposes of this Policy, the time at which a small business discovers that a violation has or may have occurred begins when any officer, director, employee, or agent of the facility becomes aware of any facts that reasonably lead him or her to believe that a violation may exist. If a small

business has some doubt as to the existence of a violation, EPA recommends that the business make a prompt disclosure and allow the regulatory authorities to make a definitive determination. This will ensure that the small business meets the disclosure period requirement.

- ii. The disclosure of the violation must occur before the violation was otherwise discovered by, or reported to EPA, the appropriate state or local regulatory agency. See section F.1 of the Policy below. Good faith also requires that a small business cooperate with EPA and in a timely manner provide such information requested by EPA to determine applicability of this Policy.

- iii. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential assistance program, the business may still take advantage of the policy by disclosing the violation to the appropriate regulatory agency.

3. **Violation is Corrected.** The business corrects the violation within the corrections period set forth below. Small businesses are expected to remedy the violations within the shortest practicable period of time. Correcting the violation includes remediating any environmental harm associated with the violation, as well as putting into place procedures to prevent the violation from happening again.

- i. For any violation that cannot be corrected within 90 calendar days of its discovery, the small business must submit a written schedule, or the agency may, at its sole discretion, elect to issue a compliance order with a schedule, as appropriate. The small business must correct any violations within 180 calendar days after the date that they were discovered.

- ii. If the small business intends to correct the violation by putting into place pollution prevention measures, the business may take an additional period of up to 180 calendar days, i.e., up to a period of 360 calendar days from the date the violation is discovered.

4. **When the Policy Does Not Apply.** The Policy does not apply if:

- a. The facility has the following noncompliance history:

- i. it has previously received a warning letter, notice of violation, or field citation, or been subject to a citizen suit or any other enforcement action by a government agency for a violation of the same requirement within the past three years.

- ii. it has been granted penalty reduction under this Policy (or a similar State or Tribal policy) for a violation of the same or a similar requirement within the past three years.

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<sup>1</sup> The number of employees should be considered as full-time equivalents on an annual basis, including contract employees. Full-time equivalents means 2,000 hours per year of employment. For example, see 40 CFR §372.3.

iii. it has been subject to two or more enforcement actions for violations of environmental requirements in the past five years, even if this is the first violation of this particular requirement.

b. the violation was discovered through an information request, inspections, field citations, reported to a federal, state or local agency by a member of the public or a "whistleblower" employee, identified in notices of citizen suits, previously reported to an agency, or through an investigation unless the facility can demonstrate that it did not know that the agency had initiated the investigation and has disclosed in good faith.

c. The violation has caused actual serious harm to public health, safety, or the environment;

d. The violation is one that may present an imminent and substantial endangerment to public health, safety or the environment; or

e. The violation involves criminal conduct.

#### **E. PENALTY REDUCTION GUIDELINES THAT EPA WILL FOLLOW**

EPA will exercise its enforcement discretion to eliminate or reduce civil penalties as follows.

1. EPA will waive the gravity component of the civil penalty if a small business satisfies all of the criteria in section D. If, however a small business has obtained a significant economic benefit from the violation(s), EPA will still waive 100% of the gravity component of the penalty, but may seek the full amount of the significant economic benefit associated with the violations.<sup>2</sup> EPA anticipates that such a significant economic benefit will occur infrequently. However, EPA retains its discretion to ensure that small businesses that comply with public health protections are not put at a serious competitive disadvantage by those who have not complied.

2. If a small business does not fit within the guideline E.1.immediately above, this Policy does not provide any special penalty reduction. However, if a small business has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable enforcement response or penalty policies, to waive or reduce civil penalties.<sup>3</sup>

3. Further, the Agency's

enforcement response and penalty policies may allow for penalty reduction where the small business is able to document an inability to pay all or a portion of the penalty. Penalty reduction in this situation allows the small business to stay in business and to finance compliance. See *Guidance on Determining a Violator's Ability to Pay a Civil Penalty* of December 1986 (see <http://www.epa.gov/oeca/ore/aed/comp/acomp/a1.html>). Penalties also may be reduced pursuant to the *Final EPA Supplemental Environmental Projects Policy* of May 1998 (63 FR 24796, June 5, 1998, available at <http://www.epa.gov/oeca/sep/sepfinal.html>) and *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy* of April 11, 2000.

4. This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil penalty for violations by small businesses. It states the Agency's views as to the proper allocation of enforcement resources. This Policy is not final agency action and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

#### **F. ENFORCEMENT FOR VIOLATIONS NOT PROMPTLY CORRECTED**

To ensure that this Policy enhances and does not compromise public health and the environment, a business remains subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

#### **G. APPLICABILITY TO STATES AND TRIBES**

Small businesses may take advantage of small business policies that many States have developed. EPA recognizes that states and tribes are partners in enforcement and compliance assurance and may have adopted their own penalty mitigation policies in Federally-authorized, approved or delegated programs. Therefore, EPA will generally defer to State and Tribal penalty mitigation for self disclosures as long as the State policy meets minimum requirements for Federal delegation and is generally consistent with the criteria set forth in this Policy. Whenever a State agency or Tribe provides a penalty waiver or mitigation or a correction period to a small business pursuant to this Policy or a similar policy, that State or Tribe should notify the appropriate EPA Region to ensure coordination and to request that EPA defer to that action. Similarly, EPA will notify the appropriate State agency or Tribe whenever EPA applies this policy to ensure coordination and request the States defer to

EPA's action. Regional contacts, along with other materials about the Policy, will be posted at the EPA web page (<http://www.epa.gov/oeca/smbusi.html>) as they become available.

#### **H. EFFECTIVE DATE**

This revised Policy is effective May 11, 2000.

Dated: April 5, 2000. **Sylvia K. Lowrance**, Acting Assistant Administrator for Enforcement and Compliance Assurance.

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<sup>2</sup> The "gravity component" of the penalty includes everything except the economic benefit amount.

<sup>3</sup> For example, in some media specific penalty policies, the penalty calculation may be reduced to account for good faith efforts to comply.